

REMARKS

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Thayer** et al (6,131,209) in view of **Beames** (D 466, 543).

The Examiner states that Thayer et al. discloses eyewear comprises solid frames 60 having a lens.

Item 60 in Thayer is described as protective goggles as shown in col. 4, lines 65-66. Applicant submits the dictionary definition of goggles which "are large spectacles equipped with special lenses, protective rims, to prevent injury to the eyes from strong wind, flying objects, blinding light." As opposed to sunglasses which are "eyeglasses with colored or tinted lenses that protect the eyes from the glare of sunlight. Applicant has amended the claims to state that the lenses are colored. Support for this is found in the specification. Nowhere does Thayer describe sunglasses, nor does Thayer describe that the lenses are colored.

The Examiner states that the band 52 can be totally removed from the frames and replaced with other similar bands. Nowhere in Thayer does it state that this band 52 is replaceable or is replaced by other bands.

The Examiner states that eyeglasses have long been designed with the general objective of correction of vision of the eyes of the wearers. However, Thayer does not teach eyeglasses, but teaches goggles which are not designed with the objective of correction of vision of eye wearers. Since eyeglasses and goggles are not from the same field of endeavor, one of skill in the art cannot

combine the references, and therefore, the claims would not be obvious over Thayer in view of Beames.

Applicant argues that Thayer teaches a cleaning apparatus for goggles. The apparatus of Thayer requires a compartment 54 having a cleaning cloth contained therein. Since the claims have consisting of language, the combination of Thayer and Beames cannot make obvious applicant's claims.

Applicant points to section 211.03 which relates to transition phrases including "comprising" and "consisting of". This section specifically states that the transition phrase "consisting of" excludes any element, step or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 225 (CCPA 1931). *Exparte Davis* 80 USPQ448 (Bd. App. 1948).

In Norian Corp. v. Stryker Corp. Fed. Cir. 2004, the Court held that "consisting of" is a term of patent convention meaning that the claimed invention contains only what is expressly set forth in the claim.

In Georgia Pacific v. United States Gypsum, 195 F.3d 1322 Fed. Cir. 1999. The Court described the MPEP as explaining the difference between "comprised" and "consists" as follows.

The transitional term "comprising"...is inclusive or open-ended and does not exclude additionally, unrecited elements or method steps.

The transitional phrase "consisting of" excludes any element step, or ingredient not specified in the claim.

Based on the MPEP and the case law cited above, because Thayer requires a compartment containing a cleaning cloth, it cannot make obvious with Beames the claims of the present invention.

Claims 13-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sadowsky (5,042,094).

Sadowsky discloses eyewear with prosthetic parts for small children comprises frame (30) for holding two lenses (20), the frame (the frame 30 is constructed with resilient material, preferably also soft and pliable see column 3, lines 21 and 22) secured to a head by a band (40), said band (40) is secured to the frames by two securing pieces (42) including Velcro is used for both securing pieces and the band (40) can be totally removed from the frame and replaced with other similar band (see figure 1 and the related disclosure.) Note that solid frame means the frame having interior completely filled up and free from cavity, or not hollow.

Applicant has amended the claims to state that the lenses are colored. Nowhere does Sadowsky teach colored lenses. Further, the Examiner states that other similar bands can be replaced with a band. Nowhere is that taught or shown in Sadowsky. It only shows that the same band can be open to be removed from a child's head, but not replaced with a further band.

Sadowsky specifically states that it teaches a specifically designed nose and temple pieces that are incorporated into the frame of the glasses. As stated

previously, prosthetic appendages 34 and 36 must be included in Sadowsky. Therefore, the above claims are not anticipated or obvious over Sadowsky”.

The Examiner argues that because the prosthetic appendages are part of the frame, they are not further required pieces. This is incorrect. Sadowsky requires that even if these pieces are not a separate piece, these prosthetic appendages must be part of the frame to function and therefore, are a structure that is required. The Examiner points to Claim 3 to state that the frame and lens consist of a single structure, however, it is claim 1 which Claim 3 depends on which states that frame encase said transparent lens portion and have prosthetic parts to achieve a contoured fit. It then goes on to describe the prosthetic parts as comprising a nose piece shaped like the upper portion of an adults nose and attached vertically to an interior midsection of the frame for contact with the wearer’s face, and wherein the prosthetic parts further comprise two temple pieces shaped like the arc of the forehead and the zygomatic bone on each side of the wearer’s face. Therefore, the Examiner’s argument regarding Claim 3 holds no weight.

Applicant points to section 211.03 which relates to transition phrases including “comprising” and “consisting of”. This section specifically states that the transition phrase “consisting of” excludes any element, step or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 225 (CCPA 1931). *Exparte Davis* 80 USPQ448 (Bd. App. 1948).

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The transitional phrase “consisting of” excludes any element step, or ingredient not specified in the claim.

Based on the MPEP and the case law cited above, because Sadowsky requires the prosthetic pieces, it cannot make anticipate the claims of the present invention.

Claim 13 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Laschober (4,930,885).

Laschober discloses eyeglasses with releasable headband support arrangement comprises one piece solid molded frame (14) for holding two lenses (16), the frame (14) having a nose bridge (18) which fits on top of the user nose, the frame (14) secured to a head by a band (28), said band (28) secured to the frames by two securing pieces (30), wherein the band (28) is removed from the frame by either or both of the securing means (see figures. 1-4 and the related disclosure.)

Applicant has amended its claims to state that the lenses are colored. Nowhere does Laschober state that the lenses are colored. Further, nowhere does Laschober show or teach that the band can be removed or replaced with another band.

Applicant argued that "Laschober requires an attachment member adapted for the releasable securement to a connector member. Since the claims require "consisting of" language, Laschober cannot anticipate or make obvious the claims." The Examiner has stated that Laschober teaches every feature of the claimed device, however, the Examiner has not stated that Laschober also teaches further elements that are required which make Laschober not able to anticipate or make obvious the claims of the present invention.

Applicant points to section 211.03 which relates to transition phrases including "comprising" and "consisting of". This section specifically states that the transition phrase "consisting of" excludes any element, step or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 225 (CCPA 1931). *Exparte Davis* 80 USPQ448 (Bd. App. 1948).

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The transitional term "comprising"...is inclusive or open-ended and does not exclude additionally, unrecited elements or method steps.


The transitional phrase "consisting of" excludes any element step, or ingredient not specified in the claim.

Based on the MPEP and the case law cited above, because Laschober requires the attachment member, it cannot make anticipate or make obvious the claims of the present invention.

Applicant believes the application is in condition for allowance.

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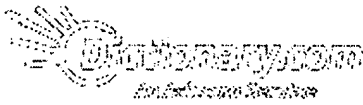
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sun·glass·es [suhn-glas-iz, -glah-siz] [Show IPA](#)

-plural noun

eyeglasses with colored or tinted lenses that protect the eyes from the glare of sunlight.

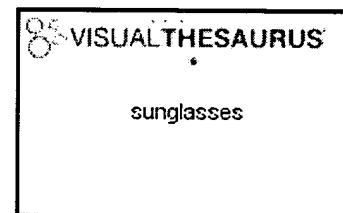
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1800-10; sun + GLASSES

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sun·glass¹ [suhn-glas, -glahs] [Show IPA](#)

-noun

burning glass.

Origin:

1800-10; sun + glass

burning glass

–noun

a converging lens used to produce heat or ignite substances by

focusing the sun's rays.

Also called **sunglass**.

Origin:

1560–70

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sun·glass (sŭn'glās')

n.

1. A convex lens used to focus the sun's rays and produce heat, especially for ignition.
2. **sunglasses** Eyeglasses with tinted or polarizing lenses to protect the eyes from the sun's glare.

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Medical Dictionary

sun·glass·es definition

Pronunciation: /-ˈɡlas-əs/

Function: *noun pl*

: glasses used to protect the eyes from the sun

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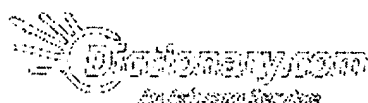
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Synonyms

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 goggle eye

gog·gle [**gog**-uh l] [Show IPA](#) **noun, verb**, -gled, -gling, **adjective**

—noun

1. goggles, large spectacles equipped with special lenses, protective rims, etc., to prevent injury to the eyes from strong wind, flying objects, blinding light, etc.
2. a bulging or wide-open look of the eyes; stare.

—verb (used without object)

3. to stare with bulging or wide-open eyes.
4. (of the eyes) to bulge and be wide open in a stare.
5. to roll the eyes.
6. (of the eyes) to roll.
7. *Informal* . to spearfish.

—verb (used with object)

8. to roll (the eyes).

—adjective

9. (of the eyes) rolling, bulging, or staring.

Origin:

1350–1400; ME *gogelen* to look aside; cf. *agog*

—Related forms

un·gog·gled, *adjective*

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
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Word Origin & History

goggle

1540, from M.E. *gogelen* "to roll about" (late 14c.), infl. by M.E. *gogel-eyed* "squint-eyed, one-eyed" (late 14c.), of uncertain origin, perhaps somehow imitative. As a surname (Robert le Gogel) attested from c.1300. Noun sense of "protective eyeglasses" first recorded 1715.

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gog·gle  (gŏg'gŏl) 

v. **gog·gled** , **gog·gling** , **gog·gles**

v. *intr.*

1. To stare with wide and bulging eyes.
2. To roll or bulge. Used of the eyes.

v. *tr.*

To roll or bulge (the eyes).

n.

1. A stare or leer.
2. **goggles** A pair of tight-fitting eyeglasses, often tinted or having side shields, worn to protect the eyes from hazards such as wind, glare, water, or flying debris.

[Middle English *gogelen* , *to squint* .]

gog'gly *adj.*

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Medical Dictionary

gog·gles definition

Pronunciation: /gŏg-gŏlz/

Function: *noun pl*

: protective glasses set in a flexible frame (as of rubber or plastic) that fits snugly against the face

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